RECENT CASES

ADMIRALTY — PRACTICE — RIGHT TO WITHDRAW SUIT AFTER DEFENDANT HAS PETITIONED FOR LIMITATION OF LIABILITY. — The claimant brought suit for the loss of her baggage on the "Titanic." The defendant filed a petition for limitation of liability under a United States statute. The claimant now desires to withdraw her suit, presumably to sue in England where the damages would be higher. *Held*, that the suit may be withdrawn on payment of costs. *The Titanic*, 225 Fed. 747 (C. C. A., 2d Circ.).

At common law a plaintiff may voluntarily dismiss his suit at any time before judgment; and his reasons for discontinuing are immaterial. *Banks* v. *Uhl*, 6 Neb. 145; *Petition of Butler*, 101 N. Y. 307, 4 N. E. 518. And merely that the plaintiff's claim has been resisted does not deprive him of his right to dismiss the action. *Wilborn* v. *Elemendorf*, 40 S. W. 1059 (Tex.); *McCabe* v. *Southern Ry. Co.*, 107 Fed. 213. But a dismissal will not be permitted when the defendant asks affirmative relief such as a set-off or counterclaim. *Grignon* v. *Black*, 76 Wis. 674, 45 N. W. 122; *Boyle* v. *Stallings*, 140 N. C. 524, 53 S. E. 346. *Contra*, *Huffstutler* v. *Louisville Packing Co.*, 154 Ala. 291, 45 So. 418. A petition in admiralty for the limitation of liability is like recoupment in that it makes no affirmative claim for damages, but seeks merely to reduce the amount for which the shipowner is liable. On the other hand, all other suits against the petitioner are temporarily enjoined and, if the petition is granted, the injunction is made perpetual. See BENEDICT, ADMIRALTY, §§ 525, 526. In this respect it resembles a cross bill in equity which is frequently held to prevent the plaintiff's dismissing the suit. *Tift* v. *Keaton*, 78 Ga. 235, 2 S. E. 690; *Pullman's Palace-Car Co.* v. *Central Transportation Co.*, 49 Fed. 261. *Contra*, *Waite* v. *Wingate*, 4 Wash. 324, 30 Pac. 81. Thus, if the petition is to be regarded as a mere defense to the claim for damages, with the perpetual injunction only an incident to this relief, the principal case can be supported; but if it is regarded as giving affirmative relief apart from resistance to the present action, the defendant was unjustly prejudiced by the permission given to the claimant to withdraw her suit.

APPEAL AND ERROR — INVITED ERROR — VERDICT WITHOUT EVIDENCE ON INSTRUCTIONS REQUESTED BY APPELLANT. — The defendant, on trial for murder, was convicted of manslaughter under an instruction requested by himself. The instruction was not justified by any evidence, though there was evidence capable of supporting a conviction of murder. *Held*, that he is entitled to a new trial. *Griggs* v. *State*, 86 S. E. 726 (Ga.).

Erroneous or inappropriate instructions cannot be objected to by the party that requested them. *Flowers* v. *Helm*, 29 Mo. 324; *Threlkeld* v. *State*, 128 Ga. 660, 58 S. E. 49. Instructions are meant to be acted on by juries: if that on which the jury ought to act is free from attack by the defendant, their action on it ought to be. Under the facts, the verdict of manslaughter can only have been an act of mercy by a jury who really believed defendant guilty of the higher crime; to allow an appeal on the ground that the jury was improperly kind to him at his request seems an unnecessary lenience. Their error was as much "invited error" as was the error of the court in instructing them. And it is a common holding that a verdict cannot be impeached in an appellate court as against evidence when the complaining party has failed to move to take the question from the jury. *McDonnell* v. *United States*, 133 Fed. 293; *Browning* v. *Dorton*, 143 Mo. App. 249, 128 S. W. 230; *Hopkins* v. *Clark*, 158 N. Y. 299, 53 N. E. 27. See *State* v. *Kiger*, 115 N. C. 746, 750, 20 S. E.